

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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|--|---|---------------------------------|
| ----- | : | 21 MC 100 (AKH) |
| IN RE WORLD TRADE CENTER | : | |
| DISASTER SITE LITIGATION | : | |
| ----- | : | DOCKET NO.08 CV 3918 |
| ELIZABETH FEENEY as Administratrix | : | Judge Hellerstein |
| of the Estate of FRANK FEENEY, Deceased | : | |
| and ELIZABETH FEENEY, Individually | : | |
| | : | CHECK-OFF ("SHORT FORM") |
| Plaintiffs, | : | COMPLAINT RELATED TO |
| | : | THE MASTER COMPLAINT |
| -against- | : | |
| | : | PLAINTIFF(S) DEMAND A |
| | : | |
| | : | TRIAL BY JURY |
| THE CITY OF NEW YORK, THE PORT | : | |
| AUTHORITY OF NEW YORK AND NEW | : | |
| JERSEY, TULLY CONSTRUCTION | : | |
| CO., INC., TULLY ENVIRONMENTAL INC., | : | |
| TULLY INDUSTRIES, INC., TURNER | : | |
| CONSTRUCTION COMPANY, BOVIS LEND | : | |
| LEASE, INC., BOVIS LEND LEASE LMB, INC., | : | |
| AMEC CONSTRUCTION MANAGEMENT, INC., | : | |
| BECHTEL ASSOCIATES PROFESSIONAL | : | |
| CORPORATION, BECHTEL CONSTRUCTION, | : | |
| INC., BECHTEL CORPORATION, and BECHTEL | : | |
| ENVIRONMENTAL, INC., | : | |
| | : | |
| Defendants. | : | |
| ----- | : | X |

By Order of the Honorable Alvin K. Hellerstein, United States District Judge, dated June 22, 2006, ("the Order"), Amended Master Complaints for all Plaintiffs were filed on August 18, 2006.

NOTICE OF ADOPTION

All headings and paragraphs in the Master Complaint are applicable to and are adopted by the instant Plaintiff(s) as if fully set forth herein in addition to those paragraphs specific to the individual Plaintiff(s), which are listed below. These are marked with an "[/]" if applicable to the instant Plaintiff(s), and specific case information is set forth, as needed, below.

Plaintiff, **Elizabeth Feeney, as Administratrix of the Estate of Frank Feeney, deceased**, by their attorneys OSHMAN & MIRISOLA, LLP, complaining of Defendant(s), respectfully allege:

I. PARTIES

A. PLAINTIFF(S)

1. ☐ Plaintiff, **FRANK FEENEY** (hereinafter the “**Injured Plaintiff**”), is an individual and a citizen of New York residing at 5905 Post Road, Bronx, New York 10471.

(OR)

2. Alternatively, Elizabeth Feeney, is the Administratrix of Decedent Frank Feeney, and brings this claim in her capacity as of the Estate of Frank Feeney.

3. ☐ Plaintiff, **ELIZABETH FEENEY** (hereinafter the “**Derivative Plaintiff**”), is a citizen of New York residing at 5905 Post Road, Bronx, New York 10471, and has the following relationship to the Injured Plaintiff:

☐ SPOUSE at all relevant times herein, is and has been lawfully married to Plaintiff **FRANK FEENEY**, and brings this derivative action for her loss due to the injuries sustained by her husband, Plaintiff **FRANK FEENEY**.

☐ Parent ☐ Child ☐ Other: _____

4. In the period from on or about September 12, 2001 through on or about April 8, 2002, the Injured Plaintiff was employed by the New York City Department of Sanitation and union local 444, but worked as a supervisor and superintendent:

Please be as specific as possible when filling in the following dates and locations

| | |
|--|--|
| <p><input type="checkbox"/> The World Trade Center Site Location(s) (i.e., building, quadrant, etc.)</p> <p>XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXX</p> <p><input type="checkbox"/> The New York City Medical Examiner's Office</p> <p>From on or about _____ until _____, Approximately _____ hours per day; for Approximately _____ days total.</p> <p>XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXX</p> <p><input type="checkbox"/> The Fresh Kills Landfill On or about December 2, 2001, December 9, 2001, December 22, 2001, December 23, 2001 through on or about December 30, 2001 and again on or about February 12, 2002, February 17, 2002, February 24, 2002, March 17, 2002 and April 8, 2002; Approximately <u>8-12</u> hours per day; for Approximately <u>part of 57</u> days total.</p> | <p><input type="checkbox"/> The Barge From on or about <u>September 12, 2001</u> until on or about <u>October 28, 2001</u>; Approximately <u>8-12</u> hours per day; for Approximately <u>part of 57</u> days total.</p> <p>XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXX</p> <p><input type="checkbox"/> <i>Other:</i>* For injured plaintiffs who worked at Non-WTC Site building or location. The injured plaintiff worked at the address/location, for the dates alleged, for the hours per day, for the total days, and for the employer, as specified below:</p> |
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* Continue this information on a separate sheet of paper if necessary. If more space is needed to specify "Other" locations, please annex a separate sheet of paper with the information.

5. Injured Plaintiff

☐ Was exposed to and breathed noxious fumes on all dates, at the site(s) indicated above;

☐ Was exposed to and inhaled or ingested toxic substances and particulates on all dates at the site(s) indicated above;

☐ Was exposed to and absorbed or touched toxic or caustic substances on all dates at the site(s) indicated above;

☐ Other: not yet determined

6. Injured Plaintiff

☐ Has not made a claim to the Victim Compensation Fund. Pursuant to §405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.

- G Made a claim to the Victim Compensation Fund that was denied. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.
- G Made a claim to the Victim Compensation Fund, that was subsequently withdrawn by Ground-Zero Plaintiff. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, the issue of waiver is inapplicable.
- G Made a claim to the Victim Compensation Fund that was granted. Pursuant to § 405(c)(3)(B)(i) of the Air Transportation Safety and System Stabilization Act, 49 U.S.C. § 40101, Ground Zero-Plaintiff has waived her/his right(s) to pursue any further legal action for the injuries identified in said claim.

B. DEFENDANT(S)

The following is a list of all Defendant(s) named in the Master Complaint. If checked, all paragraphs pertaining to that Defendant are deemed pleaded herein.

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| <p>G EAGLE LEASING & INDUSTRIAL SUPPLY</p> <p>G EAGLE ONE ROOFING CONTRACTORS INC.</p> <p>G EAGLE SCAFFOLDING CO, INC.</p> <p>G EJ DAVIES, INC.</p> <p>G EN-TECH CORP</p> <p>G ET ENVIRONMENTAL</p> <p>G EVANS ENVIRONMENTAL</p> <p>G EVERGREEN RECYCLING OF CORONA</p> <p>G EWELL W. FINLEY, P.C.</p> <p>G EXECUTIVE MEDICAL SERVICES, P.C.</p> <p>G F&G MECHANICAL, INC.</p> <p>G FLEET TRUCKING, INC.</p> <p>G FRANCIS A. LEE COMPANY, A CORPORATION</p> <p>G FTI TRUCKING</p> <p>G GILSANZ MURRAY STEFICEK, LLP</p> <p>G GOLDSTEIN ASSOCIATES CONSULTING ENGINEERS, PLLC</p> <p>G HALLEN WELDING SERVICE, INC.</p> <p>G H.P. ENVIRONMENTAL</p> <p>G KOCH SKANSKA INC.</p> <p>G LAQUILA CONSTRUCTION INC</p> <p>G LASTRADA GENERAL CONTRACTING CORP</p> <p>G LESLIE E. ROBERTSON ASSOCIATES CONSULTING ENGINEER P.C.</p> <p>G LIBERTY MUTUAL GROUP</p> <p>G LOCKWOOD KESSLER & BARTLETT, INC.</p> <p>G LUCIUS PITKIN, INC</p> <p>G LZA TECH-DIV OF THORTON TOMASETTI</p> <p>G MANAFORT BROTHERS, INC.</p> <p>G MAZZOCCHI WRECKING, INC.</p> <p>G MERIDIAN CONSTRUCTION CORP.</p> <p>G MORETRENCH AMERICAN CORP.</p> <p>G MRA ENGINEERING P.C.</p> <p>G MUESER RUTLEDGE CONSULTING ENGINEERS</p> | <p>G NACIREMA INDUSTRIES INCORPORATED</p> <p>G NEW YORK CRANE & EQUIPMENT CORP.</p> <p>G NICHOLSON CONSTRUCTION COMPANY</p> <p>G PETER SCALAMANDRE & SONS, INC.</p> <p>G PHILLIPS AND JORDAN, INC.</p> <p>G PINNACLE ENVIRONMENTAL CORP</p> <p>G PLAZA CONSTRUCTION CORP.</p> <p>G PRO SAFETY SERVICES, LLC</p> <p>G PT & L CONTRACTING CORP</p> <p>G REGIONAL SCAFFOLD & HOISTING CO, INC.</p> <p>G ROBER SILMAN ASSOCIATES</p> <p>G ROBERT L GEROSA, INC</p> <p>G RODAR ENTERPRISES, INC.</p> <p>G ROYAL GM INC.</p> <p>G SAB TRUCKING INC.</p> <p>G SAFEWAY ENVIRONMENTAL CORP</p> <p>G SEASONS INDUSTRIAL CONTRACTING</p> <p>G SILVERITE CONTRACTING CORPORATION</p> <p>G SILVERSTEIN PROPERTIES</p> <p>G SILVERSTEIN PROPERTIES, INC.</p> <p>G SILVERSTEIN WTC FACILITY MANAGER, LLC</p> <p>G SILVERSTEIN WTC, LLC</p> <p>G SILVERSTEIN WTC MANAGEMENT CO., LLC</p> <p>G SILVERSTEIN WTC PROPERTIES, LLC</p> <p>G SILVERSTEIN DEVELOPMENT CORP.</p> <p>G SILVERSTEIN WTC PROPERTIES LLC</p> <p>G SIMPSON GUMPERTZ & HEGER INC</p> <p>G SKIDMORE OWINGS & MERRILL LLP</p> <p>G SURVIVAIR</p> <p>G TAYLOR RECYCLING FACILITY LLC</p> <p>G TISHMAN INTERIORS CORPORATION,</p> <p>G TISHMAN SPEYER PROPERTIES,</p> |
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| <input type="checkbox"/> TISHMAN CONSTRUCTION CORPORATION OF MANHATTAN <input type="checkbox"/> TISHMAN CONSTRUCTION CORPORATION OF NEW YORK <input type="checkbox"/> THORNTON-TOMASETTI GROUP, INC. <input type="checkbox"/> TORRETTA TRUCKING, INC <input type="checkbox"/> TOTAL SAFETY CONSULTING, L.L.C <input type="checkbox"/> TUCCI EQUIPMENT RENTAL CORP <input checked="" type="checkbox"/> TULLY CONSTRUCTION CO., INC. <input checked="" type="checkbox"/> TULLY ENVIRONMENTAL INC. <input checked="" type="checkbox"/> TULLY INDUSTRIES, INC. <input type="checkbox"/> TURNER CONSTRUCTION CO. <input checked="" type="checkbox"/> TURNER CONSTRUCTION COMPANY <input type="checkbox"/> ULTIMATE DEMOLITIONS/CS HAULING <input type="checkbox"/> VERIZON NEW YORK INC, | <input type="checkbox"/> VOLLMER ASSOCIATES LLP <input type="checkbox"/> W HARRIS & SONS INC <input type="checkbox"/> WEEKS MARINE, INC. <input type="checkbox"/> WEIDLINGER ASSOCIATES, CONSULTING ENGINEERS, P.C. <input type="checkbox"/> WHITNEY CONTRACTING INC. <input type="checkbox"/> WOLKOW-BRAKER ROOFING CORP <input type="checkbox"/> WORLD TRADE CENTER PROPERTIES, LLC <input type="checkbox"/> WSP CANTOR SEINUK GROUP <input type="checkbox"/> YANNUZZI & SONS INC <input type="checkbox"/> YONKERS CONTRACTING COMPANY, INC. <input type="checkbox"/> YORK HUNTER CONSTRUCTION, LLC <input type="checkbox"/> ZIEGENFUSS DRILLING, INC. <input type="checkbox"/> OTHER: _____ |
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| <input type="checkbox"/> Non-WTC Site Building Owners Name: Business/Service Address: Business/Service Address: Building/Worksite Address: <input type="checkbox"/> Non-WTC Site Lessee Name: _____ Business/Service Address: _____ Building/Worksite Address: _____ | <input type="checkbox"/> Non-WTC Site Building Managing Agent Name: Business/Service Address: |
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II. JURISDICTION

The Court's jurisdiction over the subject matter of this action is:

☒ Founded upon Federal Question Jurisdiction; specifically; ☒ Air Transport Safety & System Stabilization Act of 2001, (or); ☐ Federal Officers Jurisdiction, (or); ☐ Other (specify): _____; ☐ Contested, but the Court has already determined that it has removal jurisdiction over this action, pursuant to 28 U.S.C. § 1441.

III CAUSES OF ACTION

Plaintiff(s) seeks damages against the above named defendants based upon the following theories of liability, and asserts each element necessary to establish such a claim under the applicable substantive law:

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| <input type="checkbox"/> Breach of the defendants' duties and obligations pursuant to the New York State Labor Law(s) including §§ 200 and 240 | <input type="checkbox"/> Common Law Negligence, including allegations of Fraud and Misrepresentation |
| <input type="checkbox"/> Breach of the defendants' duties and obligations pursuant to the New York State Labor Law 241(6) | <input type="checkbox"/> Air Quality; <input type="checkbox"/> Effectiveness of Mask Provided; <input type="checkbox"/> Effectiveness of Other Safety Equipment Provided (specify: _____); G Other(specify): Not yet determined. |
| <input type="checkbox"/> Pursuant to New York General Municipal Law § 205- a | <input type="checkbox"/> Wrongful Death |
| <input type="checkbox"/> Pursuant to New York General Municipal Law § 205- e | <input type="checkbox"/> Loss of Services/Loss of Consortium for Derivative Plaintiff G Other: |

IV CAUSATION, INJURY AND DAMAGE

1. As a direct and proximate result of defendant's culpable actions in the rescue and/or recovery and/or construction, renovation, alteration, demolition and all work performed at the premises, the Injured Plaintiff sustained (including, but not limited to) the following injuries:

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| <p><input checked="" type="checkbox"/> Cancer Injury: metastatic melanoma (presently stage IV) of the right thigh which has begun to spread, an adrenocortical tumor, angiomyolipomas, bilateral pleural thickening, multiple lytic lesions in the spine suspicious for metastatic disease, hepatic lesions, multiple punctuate liver lesions, lytic bone lesions, a nodule next to the spleen, prominent lymph node in the root of the mesentery next to superior mesenteric artery, widespread FDG avid disease involving the skeleton, muscle, and liver. On August 30, 2007 a surgery was done consisting of wide excision of right thigh and right superficial groin dissection for metastatic melanoma, followed by chemotherapy.</p> <p>Date of onset: <u>to be provided</u> Date physician first connected this injury to WTC work: <u>to be provided</u></p> <hr/> <p><input type="checkbox"/> Respiratory Injury: Date of onset: Date physician first connected this injury to WTC work:</p> <hr/> <p><input type="checkbox"/> Digestive Injury: Date of onset: Date physician first connected this injury to WTC work:</p> | <p><input type="checkbox"/> Cardiovascular Injury: Date of onset: Date physician first connected this injury to WTC work:</p> <hr/> <p><input type="checkbox"/> Fear of Cancer: Date of onset: _____ Date physician first connected this injury to WTC work: _____</p> <hr/> <p><input type="checkbox"/> Other Injury: Date of onset: Date physician first connected this injury to WTC work:</p> |
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NOTE: The foregoing is NOT an exhaustive list of injuries that may be alleged.

2. As a direct and proximate result of the injuries identified in paragraph "1", above, the Ground Zero-Plaintiff has in the past suffered and/or will in the future suffer the following compensable damages:

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|--|---|
| <input type="checkbox"/> Pain and suffering | <input type="checkbox"/> Expenses for medical care, treatment, and rehabilitation |
| <input type="checkbox"/> Loss of the enjoyment of life | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Loss of earnings and/or impairment of earning capacity | <input type="checkbox"/> Mental anguish |
| <input type="checkbox"/> Loss of retirement benefits/ diminution of retirement benefits | <input type="checkbox"/> Disability |
| | G Medical monitoring |
| | G Other: |

3. As a direct and proximate result of the injuries described *supra*, the derivative plaintiff(s), if any, have in the past suffered and/or will in the future suffer a loss of the love, society, companionship, services, affection, and support of the plaintiff and such other losses, injuries and damages for which compensation is legally appropriate.

WHEREFORE, plaintiff(s) respectfully pray that the Court enter judgment in his/her/their favor and against defendant(s) for damages, costs of suit and such other, further and different relief as may be just and appropriate.

Plaintiff(s) demands that all issues of fact in this case be tried before a properly empanelled jury.

Dated: New York, New York
April 25, 2008

Yours, etc.

OSHMAN & MIRISOLA, LLP
Attorneys for Plaintiff

By: /s/ David L. Kremen
David L. Kremen (DK 6877)
42 Broadway, 10th Floor
New York, New York 10004
(212) 233-2100